

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1785 of 1987

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

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MULJIBHAI V KOTAK

Versus

STATE OF GUJARAT  
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Appearance:

MR NIRAV THAKKAR FOR MR MANOJ N POPAT for Petitioner  
MS HANSA PUNANI AGP for Respondents  
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CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 03/03/2000

ORAL JUDGEMENT

1. In this petition filed under Article 226 of the Constitution of India the petitioner herein has brought under challenge impugned orders dated 14.11.1984, Annexure A to the petition, passed by the Collector, Junagadh and confirmed on 14.10.1985, Annexure B to the

petition, by Secretary (Appeals), Revenue Department, in Revision. By the said order the Collector, Junagadh has turned down the request made by the petitioner to allot him Government land for residential purpose on the ground that the petitioner has not served the Government for the requisite period.

2. The petitioner is an ex-serviceman. In the year 1969 he made an application for the purpose granting him individual gamtal plot admeasuring 40 x 31 ft. of S. No. 1527 of Veraval for the purpose of construction of residential house. On the said application no decision was taken till 1984 and suddenly by order dated 14.11.1984 the Collector, Junagadh rejected the said application on the ground that the petitioner has not served as Army-man for a period of 15 years as required. Aggrieved thereby the petitioner preferred Revision Application before Secretary (Appeals), Revenue Department, Ahmedabad. The said application also met with the same fate and by order dated 14.10.1985 it was rejected. Feeling aggrieved by the said two orders the petitioner has filed this petition under Article 226/227 of the Constitution of India.

3. It is contended by the learned advocate Mr. Nirav Thakkar for the petitioner that the petitioner has submitted application as early as in the year 1969 and thereafter several reminders were also sent to the Collector. However, the Collector had not decided the said application for a period of 15 years and suddenly without hearing the petitioners and without applying mind by relying upon the circular dated 24.4.1981 the application made by he petitioner came to be rejected which is ex-facie erroneous and illegal. He further contended that the Collector by not giving opportunity of hearing to the petitioner has violated the principles of natural justice and if the Collector would have heard the petitioner he would have been able to point out the circular dated 1.5.1963 which was applicable in the year 1969 and since the Collector has not given opportunity of hearing to the petitioner the Collector has misinterpreted the circular dated 24.4.1981 which was not applicable to the application submitted by the petitioner in the year 1969 and thus has recorded an erroneous order and the Secretary (Appeals), Revenue Department, Ahmedabad, also committed similar mistake.

3. Heard learned advocates for the parties and perused the material on record.

4. What is stressed by learned advocate Mr. Thakkar

for the petitioner is that the Collector ought to have heard the petitioner before recording the said order and, therefore, he requested that the matter may be remanded to the Collector for deciding the application on the basis of the circular dated 1.5.1963 which was applicable at the relevant time when the petitioner had made application in the year 1969.

5. Learned A.G.P. Ms. Hansa Punani for the respondents supported the order impugned throughout. She submitted that so far as the grant of land to ex-service men is concerned, it was not incumbent upon the Collector to give hearing to the petitioner and, therefore, principles of natural justice have not been violated by the Collector since the Collector has decided the application on the basis of the Circular dated 24.4.1981 which was made applicable at the time of deciding the application and as per the said circular since the petitioner has not served as armyman for a period of 15 years with the Government, he is not entitled to grant of land.

6. It is not in dispute that the present petitioner is an ex-serviceman and a member of Shri Somnath Ex-Armymen Co-operative Housing Society. The said society made an application for granting land for the purpose of residential houses being constructed for the purpose of the members of the society. The said application made by the society was not granted for a longer period and thereafter it was rejected. Thereafter the petitioner in his individual capacity made an application for granting him land for the purpose of residential house in the year 1969 and the said application was decided by the Collector after abnormal delay in the year 1984 and by order dated 14.11.1984 the petitioner's request came to be turned down.

7. On perusal of the order of the Collector dated 14.11.1984 at Annexure A to the petition, order passed on 14.10.1985 in Revision by the Secretary (Appeals), Revenue Department, Annexure B to the petition and in view of Circular dated 24.4.1981 issued by the Revenue Department, Government of Gujarat, it is seen that those ex-servicemen who have served for a minimum period of 15 years in the Government is entitled to grant agricultural land. It may be appreciated that nowhere it is mentioned in the said circular that the said circular is also applicable for the purpose of granting of land for construction of residential houses to ex-service man.

8. The learned counsel Mr. Thakkar has placed

reliance on the Government Resolution of the Revenue and Agricultural Department No. LND-3962/3985-A dated 1.5.1963 and contended that as per the said circular it is not necessary or required for the ex-serviceman to serve for a minimum period of 15 years to avail allotment of land for the purpose of construction of residential house. It would be relevant to refer to the said circular which is as under:

"House-building: grant of land for ex-servicemen's Co-operative Housing Societies and ex-Servicemen for House-Site:

(i) In the rural areas Government lands are granted to the needy ex-servicemen and their co-operative housing societies for house-site without auction upto 2 gunthas in area per individual house-site plot. Concessional occupancy price may be charged and the land may be granted even free of occupancy price taking into account the capacity of the person to pay. In case of societies the capacity of each individual member to pay the occupancy price is taken into account and the concession to be granted in respect of each plot of the society is determined with reference to the capacity of each individual member intending to hold the particular plot. The grantee is required to pay annual non-agricultural assessment at the rate current in the locality and as revised from time to time, as also other taxes and cesses levied from time to time. The Collectors are authorised to sanction grants of land in accordance with foregoing orders upto the market value of Rs./250 per individual house-site plot.

(ii) In urban areas including Ahmedabad City, Government lands are granted to needy ex-servicemen co-operative housing societies for house-site without auction, upto 2 gunthas per individual member. The maximum concession to be granted in occupancy price is equal to Rs.5 per square yard or the average price of land in a lower middle class locality of the town, whichever is less. In granting concession in occupancy price the capacity of each individual member to pay the occupancy price is taken into account and the concession (subject to the maximum stated above) to be granted in respect of each plot of the society is determined with reference to the capacity of each individual member holding the particular plot."

As per the said circular in rural or in urban area including Ahmedabad City, Government lands are granted to needy ex-servicemen co-operative housing societies for house-site without auction, upto 2 gunthas per individual member and the maximum concession to be granted in occupancy price is equal to Rs.5 per square yard or the average price of land in a lower middle class locality of the town, whichever is less. In granting concession in occupancy price the capacity of each individual member to pay the occupancy price is taken into account and the concession (subject to the maximum stated above) to be granted in respect of each plot of the society is determined with reference to the capacity of each individual member holding the particular plot. A scanning of the said circular it is nowhere stated that for availing of the benefit under the said circular one has to serve for a minimum period of 15 years with the Government of India.

9. It is not in dispute and it cannot be disputed that the application was submitted in the year 1969 which came to be decided after 15 years in the year 1984 by applying the circular dated 14.4.1981 and the said order was recorded without giving opportunity of hearing to the petitioner. According to me the Collector ought to have considered the circular dated 1.5.1963 which was applicable at the relevant time as application was made in the year 1969. If the Collector would have decided the application in time, then he would have definitely considered the circular dated 1.5.1963 and not the circular dated 24.1.1981 which has caused prejudice to the petitioner.

10. In view of the above discussion, I am of the opinion that impugned order recorded by the Collector and confirmed in revision by the Secretary (Appeals), Revenue Department, is liable to be quashed and set aside and the matter is required to be remanded to the Collector to decide the application of the petitioner afresh after giving opportunity of hearing to him in light of the circular dated 1.5.1963 which was applicable at the relevant time.

11. For the foregoing reasons, this petition succeeds and accordingly it is allowed. The order dated 14.11.1984 recorded by the Collector and confirmed in revision by Secretary (Appeals), Revenue Department, by order dated 14.10.1985 is quashed and set aside. The matter is remanded to the Collector for deciding the application of the petitioner afresh after observing

principles of natural justice by giving opportunity of hearing to him. In the facts and circumstances of the case, the Collector is directed to decide the application as early as possible and preferably within a period of three months from the receipt of the writ. Rule is made absolute to the aforesaid extent with no order as to costs.

3.3.2000. (A.M. Kapadia, J.)

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